IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7315 of 2006

DEV RAJ LATA
V/S
ANAND KUMAR & ORS.

Mr. SHAMBHOO SINGH, for the appellant / petitioner

Mr. RK SINGHAL, for the respondent

Date of Order : 11.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for admission. However, at the request of the learned counsel for the parties, the matter is finally heard at this stage itself.

Heard learned counsel for parties.

By the impugned order dt. 22.11.2006 the learned trial court has dismissed the petitioner's application under Section 65 of the Evidence Act, and has also accepted the plaintiff's application under O. 11 Rule 21 and has thereby struck off defence of the petitioner. The matter arises in the circumstances that the plaintiff filed a suit for eviction pleading the tenancy to be oral while the defendant contended that there was earlier written rent note, and thereunder a sum of Rs. 50,000/- were paid as a premium, and the plaintiff wants to swallow that amount,

and therefore, it has suppressed the rent note. During pendency of the trial, the plaintiff filed a composite application under O. 11 Rule 12 and 14 C.P.C., and that happened to be allowed by learned trial court on 20.4.2004 despite the petitioner's specific stand about the rent note not being in his possession but being in possession of the plaintiff, without ordering discovery the learned trial court straight-way ordered production of the document, and obviously since the petitioner could not produce the document by the impugned order exercising powers under O. 11 Rule 21 the defence of the petitioner has been struck off.

In my view, the order directing production of the document and striking out defence are patently perverse rather contrary to law, and are required to be quashed.

So far the prayer of the petitioner to lead secondary evidence is concerned, from the above circumstances it is clear that both the parties hold the stand that they are not in possession of the original. In that view of the matter, in my view, the learned trial court was in error in refusing the petitioner's application to lead secondary evidence.

As a result of the aforesaid discussion, the writ petition is allowed. The impugned order Annexure-10 is set

aside. The petitioner's application under Section 65 of the Evidence Act, and that of the plaintiff under O. 11 Rule 21 is dismissed. The learned trial court is directed to decide the suit most expeditiously.

(N P GUPTA),J.

/Sushil/